

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

TOYA FRAZIER, DECEASED,)	
BY HER ADMINISTRATOR)	
JACQUELINE JONES,)	
)	
Plaintiff,)	No. 16-
vs.)	
)	
CHAMPAIGN COUNTY SHERIFF)	Plaintiff Respectfully Demands Trial by
DAN WALSH, IN HIS OFFICIAL)	Jury
CAPACITY; CECILE KEMP, RN;)	
BETH NOVAK, RN, Supervisor of)	
CECILE KEMP; CLAYTON)	
GOODWIN, Correctional Officer;)	
ARNOLD MATHEWS, Jail)	
Supervisor; and CHAMPAIGN)	
COUNTY, ILLINOIS)	
)	
Defendants.)	

COMPLAINT

NOW COMES the Plaintiff, Toya Frazier, deceased, by her Administrator, Jacqueline Jones, and brings forth this Complaint against the Defendants Champaign County Sheriff Dan Walsh, in his individual and official capacity; Cecile Kemp, RN; Beth Novak, RN; Clayton Goodwin; Sgt. Arnold Mathews; Champaign County, Illinois and in support of, states the following:

JURISDICTION AND VENUE

1. This is a civil action arising under the Fourteenth Amendment to the United States Constitution, The Civil Rights Act of 1964 – 42 U.S.C. §1983 and §1988, The Americans with Disabilities Act 42 U.S.C. §12101 et seq., §504 of the Rehabilitation Act of 1973- 29 U.S.C. §794, and The Illinois Constitution, Article I §2 and §12 and State Law- 735 ILCS 5/2-1704, 740 ILCS 23/5, 740 ILCS 180.01 et seq. and 755 ILCS §5/27-6.

2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331, 1343(a)(3), and also supplemental jurisdiction of state claims pursuant to 28 U.S.C. §1367.
3. This judicial district is the appropriate venue under 28 U.S.C. §1391(b) and (e)(1) because the events giving rise to the suit occurred in this judicial district.

PARTIES

4. Plaintiff, Toya Frazier, was at all times relevant a resident of the State of Illinois and the City of Urbana.
5. Toya Frazier's Administrator, Jacqueline Jones, brings this suit.
6. Defendant Dan Walsh was at all times relevant the Sheriff of Champaign County, Illinois acting under color of state law and is sued in his individual and official capacities. He was at all times relevant an elected official in charge of the Champaign County Jail. The Champaign County Jail operated by Champaign County is a part of the Sheriff's department, which is a local unit of government formed to incarcerate violators of the law.
7. Defendant Cecile Kemp, RN was at all times relevant a licensed nurse who is employed by Champaign County Jail operated by Champaign County to provide health care to inmates, acting under color of state law, and is sued in her individual capacity.
8. Defendant Beth Novak, RN was at all times relevant a licensed nurse who is employed by Champaign County Jail operated by Champaign County to provide health care to inmates and supervise the staff of nurses also employed by Champaign County Jail operated by Champaign County, acting under color of state law, and is sued in her individual capacity.
9. Defendant Clayton Goodwin, a Champaign County Jail correctional officer, was at all times relevant employed by Champaign County Jail operated by Champaign County. He is

sued in his individual capacity at all time relevant hereto he was acting under color of state law and within the course and scope of employment.

10. Defendant Sergeant Arnold Mathews, a jail supervisor who was at all times relevant employed by Champaign County and responsible for employees of Champaign County Jail operated by Champaign County. He is sued in his individual capacity at all time relevant hereto he was acting under color of state law and within the course and scope of employment.

11. Defendant Champaign County Illinois is joined in this action pursuant to Carver v. Sheiff of LaSalle County 145 Ill.2d R.20. (7th Cir. 2003)

FACTS

12. Plaintiff reincorporates and realleges paragraphs 1-11 as if fully incorporated and set forth herein.

13. The Plaintiff, at all times relevant had the following medical conditions: Hypertension, Morbid Obesity, Insomnia, Gastroesophageal Reflux Disease, Joint pain of lower extremities and a long-standing polysubstance abuse history.

14. Plaintiff was charged with Felony Theft and turned herself in on November 30, 2015, and put into a medical holding cell at the Champaign County Jail operated by Champaign County while she awaited transfer to a prison.

15. Upon arrival to the Champaign County Jail operated by Champaign County on November 30, 2015, the Plaintiff notified the Correctional Officers of her medical issues and was put on the Medical Watch List.

16. Plaintiff was initially placed in cell F2, with a mandate that a correctional officer check in on her every 13 minutes.

17. At or about 7:00 pm on November 30, 2015, the Plaintiff was placed in cell H4 with another female inmate.

18. At or about 2:00 am on December 1, 2015, the Plaintiff cried out in pain, screaming and crying in her cell because of intense abdominal pain.

19. At or about the same time and date, the Plaintiff was banging on the cell door pleading for help.

20. At or about 2:30 am or 3:00 am, the Plaintiff was moaning and groaning very loudly.

21. At or about the same time and date, Defendant Mathews asked the Plaintiff to stop moaning and groaning, as it was waking the other inmates.

22. At or about 2:50 am, after her cries for help continued, Defendant Mathews ordered that the Plaintiff be moved to cell H1 by herself.

23. At or about 6:15 am, a male inmate heard the Plaintiff's continual cries for help and heard her kicking the door of her cell.

24. At or about 6:30 am, a correctional officer asked the Plaintiff what was wrong with her stomach, to which the Plaintiff responded "heroin".

25. At or about the above time and date, defendant Mathews sent an email to the medical staff at the jail, stating "Inmate Frazier's stomach hurts due to heroin withdrawal. Can you see her at your early (*sic*) convenience?"

26. At or about 7:30 am, a correctional officer sought out and notified Defendant Novak about the Plaintiff's need for medical treatment.

27. At or about 11:30 am, Defendant Novak completed a COWS screening which indicated that the Plaintiff could begin treatment for heroin withdrawal.

28. At or about the above time and date, Defendant Novak notified a doctor that the Plaintiff needed to begin the medical regimen which treats heroin withdrawals and was given permission to proceed.

29. At or about 2:30 pm, Defendant Kemp attended to the Plaintiff and advised the Plaintiff that she would receive her next treatment between 4:00 pm and 4:30 pm.

30. At or about 3:23 pm, the Plaintiff removed items from her toiletry bag and appeared to place 3 to 4 items in her mouth.

31. At or about 3:50 pm, the Plaintiff appeared to have a small seizure. At no point after this time did the Plaintiff move.

32. At or about 4:43 pm, Defendant Goodwin brought food to the Plaintiff's cell and left the tray on the sink.

33. At or about 5:00 pm, a correctional officer and a daytime trustee were collecting the evening meal trays and noticed that the Plaintiff did not touch her meal.

34. After shouting into the Plaintiff's face, the correctional officer found that the Plaintiff was unresponsive and was not breathing.

35. The correctional officer notified a sergeant for assistance.

36. At or about 5:11 pm, the sergeant advised the correctional officer that he had called for emergency medical assistance, after which he shouted in the Plaintiff's face, attempting to awaken her.

37. At or about 5:17 pm, Arrow Ambulance personnel arrived and found the Plaintiff unresponsive, and transported her to Carle Hospital.

38. At 5:46 pm, the plaintiff was pronounced dead by the attending physician.

39. At 10:00 pm, Champaign County Deputy Coroner Jeff Zumwalt notified the Plaintiff's sister that the Plaintiff had died.

COUNT I: Constitutional Depravation of Plaintiff's Constitutional Rights Pursuant to 42 U.S.C. §1983

40. Plaintiff reincorporates and realleges paragraphs 1-39 as if fully incorporated herein.

41. Defendants Walsh, Novak, and Mathews are the supervisory officials responsible for development and implementation of policies and procedures for the identification and handling of inmates suffering serious medical conditions, including drug withdrawal.

42. By and through their agents, Defendants Walsh, Kemp, Novak, Goodwin, Mathews, and Champaign County are responsible for conduct of the employees of Champaign County Jail operated by Champaign County and the well-being of its inmates.

43. Because the Plaintiff Toya Frazier had no control over her confinement, the Champaign County Sheriff's Department had an absolute duty to care for and ensure the Plaintiff's well-being and safety.

44. After being made aware of the Plaintiff's medical condition and emergency medical needs, the Defendants exercised deliberate indifference to the Plaintiff's serious medical needs by failing to provide requested and necessary medical treatment and failing to respond to the Plaintiff's increasing pleas for medical assistance.

45. The failure to act on and respond to the Plaintiff's serious medical needs and medical emergency proximately caused, in whole or in part, her conscious pain and suffering and her death, depriving the Plaintiff her rights under the Fourteenth Amendment and in violation of 42 U.S.C. §1983.

COUNT II: Custom and Policy of Deliberate Indifference Pursuant to 42 U.S.C. §1983

46. Plaintiff reincorporates and realleges paragraphs 1-39 as if fully incorporated herein.

47. Defendants Walsh, Novak, and Mathews are the supervisory officials responsible for development and implementation of policies and procedures for the identification and handling of inmates suffering serious medical conditions, including drug withdrawal.

48. Defendants Walsh, Novak, Mathews, and Champaign County were aware, because of the thirteen deaths which have taken place in the Champaign County Jail since 2004, of the need for appropriate policies and procedures concerning the identification and handling of inmates suffering serious medical conditions, including drug withdrawal.

49. Despite knowledge of this need, Defendants acted with deliberate indifference and failed to develop and implement adequate policies and procedures to ensure the safety and livelihood of the inmates housed in Champaign County Jail operated by Champaign County.

50. It was reasonably foreseeable, that without such policies and procedures, inmates such as the Plaintiff, suffering from serious medical conditions, would continue to suffer without medical treatment at the hands of the Defendants.

51. Due to the Defendants' failure to develop such policies and procedures as would train employees to treat medical conditions and emergencies appropriately, the employees at the jail failed or refused to provide the Plaintiff with necessary medical care, thereby proximately causing in whole or in part her conscious pain and suffering and her death, depriving the Plaintiff her rights under the Fourteenth Amendment and in violation of 42 U.S.C. §1983.

COUNT III: Failure to Train and Supervise Pursuant to 42 U.S.C. §1983

52. Plaintiff reincorporates and realleges paragraphs 1-39 as if fully incorporated herein.

53. Defendant Walsh was aware of the need for appropriate policies and procedures to monitor and discipline jail employees to prevent illegal and unconstitutional behavior by employees against inmates housed in the Champaign County Jail operated by Champaign County.

54. The Defendant failed to develop and implement such policies and procedures, thereby enabling jail employees to act in such a way that violates the constitutional rights of the inmates, including the Plaintiff, without fear of reprimand, discipline, or criminal prosecution.

55. This failure created an atmosphere ripe for such abuses to take place with deliberate indifference to the constitutional rights of the inmates housed in the Champaign County Jail operated by Champaign County with malicious intent without being held accountable for such reckless disregard for the aforementioned constitutional rights.

COUNT IV: Violation of the Americans with Disabilities Act and Section 504 Rehabilitation Act

56. Plaintiff reincorporates and realleges paragraphs 1-39 as if fully incorporated herein.

57. Champaign County Jail operated by Champaign County is a local governmental entity which engages in offering and providing care and medical services to members of the public who are inmates therein, and which receives federal funding.

58. Champaign County Jail operated by Champaign County is required to comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

59. The Plaintiff qualifies as a person with a disability due to her history of substance abuse, and required such care as is guaranteed all disabled persons by the Americans with Disabilities Act.

60. The Defendant supervises and oversees all employees and their activities at Champaign County Jail operated by Champaign County and is responsible for enforcing employee compliance with the Americans with Disabilities Act.

61. Defendant Champaign County through willful and wanton conduct, violated the Americans with Disabilities Act by failing to provide adequate medical attention and care for the Plaintiff and accommodate her severe impairment.

COUNT V: Wrongful Death Pursuant to 740 ILCS §180/0.01 et seq.

62. Plaintiff reincorporates and realleges paragraphs 1-39 as if fully incorporated herein.

63. Plaintiff brings this action pursuant to the Illinois Wrongful Death Act (740 ILCS 180 *et seq*).

64. The Defendants failed to provide adequate medical care to an inmate about whose medical conditions they had preexisting knowledge.

65. The Defendants failed to provide adequate medical attention and check on her every 13 minutes as is protocol in Champaign County Jail operated by Champaign County.

66. The Defendants, through their agents, did not check on the Plaintiff in accordance with the standards set out by their medical watch procedures.

67. The Defendants' failure resulted in the Plaintiff's untimely and unnecessary death.

68. On information and belief, at all relevant times, it was the duty and responsibility of the Defendants to exercise reasonable care to provide for the medical needs of the Plaintiff and all other inmates housed within Champaign County Jail operated by Champaign County.

69. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions and the Defendant's breach of duty, the Plaintiff suffered injuries that ultimately resulted in her untimely death.

70. The family of the Plaintiff has unexpectedly lost forever a loved one. The Plaintiff was a loving grandmother who doted on her seven grandchildren.

71. The Plaintiff's family is not only grieving over their sudden loss but must also cope with the unexpected expense associated with her passing.

72. As a direct and proximate result of the breach of Defendant's duty, the Plaintiff's survivors suffered pecuniary loss and have been deprived of society, companionship, love, and affection of their sister, mother, and grandmother.

73. Defendants owed a duty to provide professional and responsible health services too the Plaintiff. Notwithstanding this duty, after being made aware that the Plaintiff required emergency medical care, Defendants, acting in accordance with their policies and procedures, willfully, wantonly, or negligently refused to take action to provide the Plaintiff with medical care, thereby proximately causing, in whole or in part, her conscious pain and suffering and her death.

COUNT VI: Medical Malpractice Pursuant to 735 ILCS §5/2-1704

74. Plaintiff reincorporates and realleges paragraphs 1-39 and 62-73 as if fully incorporated herein.

75. The Plaintiff is a resident of Urbana, Champaign County, Illinois.

76. On or about November 30, 2015 and December 1, 2015, Defendants Kemp and Novak were nurses licensed to practice medicine in the State of Illinois, and regularly engaged in the practice of medicine in Champaign, Illinois.

77. On or about November 30, 2015 and December 1, 2015, Defendants Kemp and Novak held themselves out as being duly competent and qualified to render medical care, attention and treatment to the general public.

78. On or about November 30, 2015 and December 1, 2015, Defendants Kemp and Novak were employees or agents of Champaign County.

79. On or about November 30, 2015 and December 1, 2015, Defendants Kemp and Novak had medical privileges in Champaign County.

80. On or about November 30, 2015 and December 1, 2015, Defendants Kemp and Novak negligently failed to provide medical services to the Plaintiff in Urbana, Champaign County, Illinois.

81. On or about November 30, 2015, Defendant Novak provided the Plaintiff with medication commonly prescribed to treat withdrawals in patients with a history of substance abuse.

82. On or about November 30, 2015 and December 1, 2015 Defendants Novak and Kemp owed a duty of care to the Plaintiff to perform their duties within an acceptable standard of medical care within the medical community. Attached hereto and incorporated herein as Exhibit 1 is Plaintiff's §622 Affidavit.

83. Defendants Kemp and Novak breached this standard of care by initiating treatment of the Plaintiff's withdrawal but failing to provide subsequent treatments, causing the Plaintiff physical, mental, emotional injury, and ultimately, death.

84. As a direct and proximate result of the breach of the applicable standard of medical care by Defendants Kemp and Novak, the Plaintiff was found unresponsive at 5:11 pm, after the Defendants failed to provide the Plaintiff with her required treatment at 4:30 pm.

85. All of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent acts of Defendants Kemp and Novak without any act or omission on the part of the Plaintiff.

COUNT VII: Negligence Pursuant to 755 ILCS §5/27-6

86. Plaintiff reincorporates and realleges paragraphs 1-39 and 62-85 as if fully incorporated herein.

87. Defendants Sheriff Dan Walsh and Champaign County Jail operated by Champaign County, by and through its agents, had a duty to provide security and supervision to all inmates.

88. The Defendants provide said security and supervision in a number of ways, one of which is searching incoming inmates for contraband.

89. The Defendants have a duty to ensure that the inmates do not have or possess on their person or in their cell contraband or other items prohibited by Champaign County Jail operated by Champaign County.

90. Upon arrival, a corrections officer at Champaign County Jail operated by Champaign County expressed doubt as to when or where the Plaintiff was searched.

91. The corrections officer did not conduct a search of the Plaintiff.

92. The Plaintiff was strip-searched by a corrections officer after her arrival to Champaign County Jail operated by Champaign County, but only when the Plaintiff was prepared to shower.

93. The corrections officer who strip-searched the Plaintiff took the Plaintiff's "street clothes" into her possession.

94. At approximately 3:23 pm on December 1, 2015, the Plaintiff is seen taking a tissue out of her toiletry bag, and places several items into her mouth one by one, as if eating something.

95. At approximately 3:50 pm, the Plaintiff had a small seizure and did not move at all after that event.

96. The coroner's report shows that the Plaintiff's cause of death was diphenhydramine toxicity and misuse.

97. The Champaign County Jail operated by Champaign County also had a duty to provide the Plaintiff with proper supervision to ensure that the Plaintiff would not obtain or use medications that would cause harm to her health.

98. The Champaign County Jail operated by Champaign County, by and through its agents, also had a duty to search and seize any contraband brought into the jail by inmates.

99. Because of the negligence of the Defendants Sheriff Dan Walsh, Nurse Cecile Kemp, Nurse Beth Novak, Correctional Officer Clayton Goodwin, Sergeant Arnold Mathews, and Champaign County Jail operated by Champaign County by and through its agents, the Plaintiff suffered in pain for hours before losing her life.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment on as follows:

On all Counts:

- a. Compensatory general and special damages in accordance with proof; and
- b. Costs of suit necessarily incurred herein; and
- c. Such further relief as the Court deems just or proper; and

On Count I and Count II:

- d. Reasonable Attorney's fees and expenses of litigation; and
- e. Punitive damages against defendants (except the immune entity defendants) in an amount sufficient to punish those defendants and to deter further misconduct; and
- f. Compensatory damages related to the heirs of Toya Frazier and their loss of society and companionship, loss of financial support; and

On Count IV:

- g. Compensatory general and special damages in accordance with proof; and
- h. Costs of suit necessarily incurred herein; and
- i. Reasonable Attorney's fees and expenses of litigation; and
- j. Such further relief as the Court deems just or proper; and

On Count V, Count VI, and Count VII:

- k. Statutory damages as allowed.

TOYA FRAZIER, Deceased, by her
Administrator JACQUELINE JONES,
Plaintiff

By: s/Shayla Maatuka

Shayla Maatuka of Dodd & Maatuka

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Date: 12/1/2015 By: s/Shayla Maatuka

Shayla Maatuka of Dodd & Maatuka

RULE 222 AFFIDAVIT

NOW COMES your Affiant, SHAYLA MAATUKA of DODD & MAATUKA, first being duly sworn on oath and states that the total damages sought in the above-referenced matter exceed \$50,000.00.

Date: 12/1/2015 By: s/Shayla Maatuka
Shayla Maatuka of Dodd & Maatuka

SUBSCRIBED and SWORN to before me

this 1st day of December, 2016.

s/Stacy McCulley.

Notary Public



Shayla Maatuka of
DODD & MAATUKA
303 S. Mattis, Suite 201
Champaign, IL 61821
Telephone: 217.356.9500
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that the undersigned believes the same to be true.

s/Jacqueline Jones

JACQUELINE JONES, Administrator for
TOYA FRAZIER, Deceased, Plaintiff

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